

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fenkel	Team: Squad #6	CCRB Case #: 201800529	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/20/2018 12:30 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 7/20/2019	EO SOL 7/20/2019	
Date/Time CV Reported Sun, 01/21/2018 9:20 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 01/21/2018 9:20 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jeremy Kostolni	7797	955024	075 PCT
2. POM Anthony Chon	01857	963458	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Anthony Ambrosino	08260	954483	075 PCT
2. POM Michael Misilewich	03869	950892	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jeremy Kostolni	Force: Police Officer Jeremy Kostolni used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
B.POM Anthony Chon	Force: Police Officer Anthony Chon used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
C.POM Jeremy Kostolni	Force: Police Officer Jeremy Kostolni restricted § 87(2)(b)'s breathing.	§ 87(2)(g), § 87(4-b)
D.POM Jeremy Kostolni	Abuse: Police Officer Jeremy Kostolni forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
E.POM Anthony Chon	Abuse: Police Officer Anthony Chon forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)

Case Summary

On January 21, 2018, § 87(2)(b) filed this complaint via the CCRB's online website.

On January 20, 2018, at approximately 12:30 p.m., Police Officer Jeremy Kostolni, Police Officer Anthony Chon, Police Officer Anthony Ambrosino, and Police Officer Michael Misilewich, all of the 75th Precinct, responded to § 87(2)(b)

§ 87(2)(b) PO Kostolni allegedly used a forcible takedown on § 87(2)(b) (**Allegation A: Force**, § 87(2)(g) and he and PO Chon allegedly held § 87(2)(b) down against the floor (**Allegation A continued, Allegation B: Force**, § 87(2)(g) PO Kostolni pressed his forearm against § 87(2)(b)'s upper back, which allegedly restricted her breathing (**Allegation C: Force**, § 87(2)(g) § 87(2)(b) was removed to § 87(2)(b) (**Allegations D – E: Abuse of Authority**, § 87(2)(g)

§ 87(4-b), § 87(2)(g)

No arrests or summonses resulted from this incident.
There is no video evidence in this case.

Findings and Recommendations

Allegation A – Force: Police Officer Jeremy Kostolni used physical force against § 87(2)(b)

Allegation B – Force: Police Officer Anthony Chon used physical force against § 87(2)(b)

§ 87(2)(b) (Board Review 01, Board Review 02) testified that prior to this incident, she became upset because she believed her book of poetry had been stolen by another resident of her group home. She yelled and flipped over a table in the common room before ultimately locating her property and returning to her bedroom. Approximately two minutes later, PO Kostolni, PO Chon, and three additional officers entered § 87(2)(b)'s bedroom, accompanied by § 87(2)(b) a staff member of § 87(2)(b) (The investigation determined that PO Kostolni and PO Chon were the only officers present during this aspect of the incident).

PO Kostolni approached § 87(2)(b) while she sat on her bed, stated “we need to talk” and placed his hand on § 87(2)(b)'s ankle. § 87(2)(b) pulled her ankle away. PO Kostolni allegedly grabbed § 87(2)(b)'s ankle and dragged her from her bed onto the floor. § 87(2)(b) landed on her back. An officer, § 87(2)(b) could not recall who, ordered her to get onto her stomach, but § 87(2)(b) refused. Officers, § 87(2)(b) could not describe who, grabbed her left ankle, twisted her leg, grabbed onto her arms, and flipped her over onto her stomach, the latter resulting in § 87(2)(b) sustaining a bruise to her left elbow. § 87(2)(b) repeatedly yelled “I have PTSD!” and wiggled her shoulders and legs back and forth. As she moved, an officer, § 87(2)(b) could not distinguish who, pressed his hand against her left cheek for approximately 30 seconds until she was handcuffed. § 87(2)(b) was ultimately transported to § 87(2)(b) for a psychiatric evaluation.

§ 87(2)(b)'s medical records from § 87(2)(b) (Board Review 03) do not document any physical injuries or any statements made by § 87(2)(b) regarding officers using physical force against her. Three days after this incident, § 87(2)(b) visited § 87(2)(g) and complained of hand pain, lower back pain, and rib pain after being involved in an altercation with officers two days prior. § 87(2)(b) was diagnosed with muscle strain and discharged with instructions to take Ibuprofen.

§ 87(2)(b) was uncooperative with the investigation (see IAs for contact attempts). A copy of the § 87(2)(b) incident report (Board Review 04) regarding this incident was obtained. Though heavily redacted, it describes § 87(2)(b) as uncooperative with answering officers' questions. The officers § 87(2)(b) to come with them, but she refused and resisted being handcuffed. No further details regarding the officers' interactions with § 87(2)(b) are described.

PO Kostolni (Board Review 05) testified that he and PO Chon responded to a radio run for a violent "EDP." Upon arrival, PO Kostolni spoke with a staff member, who told him that § 87(2)(b) was unable to locate her property, became upset, broke a table, and threw water around. PO Kostolni was escorted to § 87(2)(b)'s bedroom, where he found her seated on her bed. PO Kostolni asked § 87(2)(b) what was going on. She replied, "nothing." PO Kostolni moved closer to § 87(2)(b) to "build a connection with her" and he placed his hands across the top of her feet as a precautionary measure given that the radio run described her as violent. § 87(2)(b) threatened to kick PO Kostolni. PO Kostolni and PO Chon each grabbed one of § 87(2)(b)'s arms and PO Kostolni pulled her onto the floor. PO Kostolni ordered § 87(2)(b) to put her hands behind her back, but she screamed and held her arms at her sides. PO Kostolni and PO Chon pulled § 87(2)(b)'s arms behind her back and handcuffed her. PO Kostolni denied that he and PO Chon used any additional physical force against § 87(2)(b).

PO Chon (Board Review 06) testified that upon arrival, he and PO Kostolni were told by staff that § 87(2)(b) had damaged property, was off of her psychiatric medication, and needed to go to the hospital. PO Kostolni spoke with § 87(2)(b) who acknowledged being off of her medication and having previously attempted suicide. PO Kostolni placed his hand on § 87(2)(b)'s shoulder and asked her to get up from her bed. § 87(2)(b) threatened to kick PO Kostolni. PO Kostolni grabbed § 87(2)(b)'s right arm, pulled her upright, and attempted to pull her hands behind her back into handcuffs. However, § 87(2)(b) pulled her arms forward and stepped away from PO Kostolni. PO Chon and PO Kostolni each grabbed one of § 87(2)(b)'s arms and pulled her down to the floor, where she moved her body from side-to-side and evaded being handcuffed. PO Chon and PO Kostolni pulled § 87(2)(b)'s arms into handcuffs within one minute. PO Chon denied that he and PO Kostolni used any additional physical force against § 87(2)(b).

Neither PO Misilewich (Board Review 07) nor PO Ambrosino (Board Review 08) acknowledged being present during this aspect of the incident. PO Misilewich testified that he first encountered § 87(2)(b) already handcuffed inside of her bedroom. PO Ambrosino had no recollection of entering the group home.

According to NYPD Patrol Guide, Procedure 221-02 (Board Review 09), an officer may use force that is reasonable under the circumstances to gain control of a subject who is resisting being placed into custody.

§ 87(2)(g), § 87(2)(b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation C – Force: Police Officer Jeremy Kostolni restricted § 87(2)(b) s breathing.

§ 87(2)(b) testified that in the moments leading up to her being handcuffed, an officer she could not identify pressed his forearm across her upper back and applied pressure for approximately 30 seconds, which restricted § 87(2)(b) s breathing.

PO Kostolni acknowledged that he may have placed his forearm across § 87(2)(b) s upper back while handcuffing her. (This allegation has therefore been plead to him.) However, PO Kostolni could not specifically recall if he did so and he denied that he used any physical force against § 87(2)(b) that could have restricted her breathing. § 87(2)(b) never complained of having difficulty breathing in PO Kostolni’s presence.

PO Chon denied witnessing PO Kostolni place his forearm across § 87(2)(b) s upper back and denied witnessing PO Kostolni do anything that could have restricted § 87(2)(b) s breathing. § 87(2)(b) never made any statements about having difficulty breathing.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

Allegation D – Abuse of Authority: Police Officer Jeremy Kostolni forcibly removed § 87(2)(b) to the hospital.

Allegation E – Abuse of Authority: Police Officer Anthony Chon forcibly removed § 87(2)(b) to the hospital.

Event documents (Board Review 10) indicate that a § 87(2)(b) staff member called 911 and reported § 87(2)(b) as an irate woman with a psychiatric history who was throwing things and damaging property.

§ 87(2)(b) testified that aside from flipping over a table, she did not believe she did anything else to indicate she was at risk of harming herself or anyone else.

§ 87(2)(b) (Board Review 11) and § 87(2)(b) (Board Review 12), Emergency Medical Technicians employed by the FDNY, testified that they responded to § 87(2)(b) to a call involving an emotionally disturbed person. EMT § 87(2)(b) and EMT § 87(2)(b) spoke with § 87(2)(b) outside of the location, who stated that she was upset because her poetry was missing. EMT § 87(2)(b) testified that the staff at the group home did not feel safe around § 87(2)(b) because she became violent. As such, EMT § 87(2)(b) believed it was appropriate to remove § 87(2)(b) to the hospital for a psychiatric evaluation. EMT § 87(2)(b) did not recall if

the staff specifically requested for § 87(2)(b) to be removed to the hospital. EMT § 87(2)(b) denied that § 87(2)(b) was taken to the hospital against her will and specifically requested to go to § 87(2)(b) because she previously received psychiatric treatment there. EMT § 87(2)(b) additionally noted that she would never transport a patient who she did not believe required further treatment.

PO Kostolni and PO Chon testified that they learned from a staff member that in addition to damaging property, § 87(2)(b) had a history of suicidal ideation and was possibly off her medication. PO Kostolni testified that he informed EMTs of the events that transpired prior to their arrival, and that the EMTs made the decision to remove § 87(2)(b) to the hospital. PO Chon believed that the staff requested EMTs remove § 87(2)(b) to the hospital.

PO Ambrosino testified that the decision to remove § 87(2)(b) to the hospital was made in consultation with the EMTs and staff at the group home. PO Misilewich could not recall if he was present during this aspect of the incident or had left prior to the EMTs' arrival.

The incident report prepared by § 87(2)(b) was heavily redacted. The report describes that § 87(2)(b) engaged in a "verbal altercation," but does not otherwise describe the details of this incident.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 16).
- PO Kostolni has been a member-of-the-service for five years and been a subject in one CCRB complaint involving one allegation, which was not substantiated. § 87(2)(g)
- PO Chon has been a member-of-the-service for one year and this is the first CRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of July 6, 2018, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regards to this complaint (Board Review 17).
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad No.: #6

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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